

GRADY FRANKLIN WELCH

JUNE 26, 1951.—Committed to the Committee of the Whole House and ordered to be printed

Mr. MACHROWICZ, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1109]

The Committee on the Judiciary, to whom was referred the bill (S. 1109) for the relief of Grady Franklin Welch, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The facts will be found fully set forth in Senate Report No. 290, Eighty-Second Congress, which is appended hereto and made a part of this report. Your committee concurs in the recommendation of the Senate.

[S. Rept. No. 290, 82d Cong., 1st sess.]

PURPOSE

The purpose of the proposed legislation is to pay Grady Franklin Welch the sum of \$450, in full settlement of all claims against the United States for attorney's fees paid by him in the case of United States against Welch, criminal No. 10,200, District Court of the United States for the Eastern District of Virginia, Norfolk Division.

STATEMENT

On April 22, 1950, Grady Franklin Welch was engaged in the performance of his official duties as guard supervisor at the Security Department, United States Naval Amphibious Base, Little Creek, Norfolk, Va., holding the rating of captain of base police, in civil-service status.

While so engaged he shot and killed a prowler in the restricted area of the base. The prowler was later identified as William Ernest Hendrix, private first class, United States Marine Corps Troop Training Unit of the United States Naval Amphibious Base at Little Creek. Private Hendrix had been challenged and pursued by Captain Welch and ordered to halt. Three warning shots had been fired prior to the fatal shot, which was fired at a distance of about 338 feet.

The incident was thoroughly investigated by a naval board of investigation and the board found that "Captain Welch acted in performance of his duty as a member of the civilian base police force; that he fired at Hendrix under the performance of an obligation to prevent his escape as a last resort and that he was engaged in the commission of a lawful act and that he acted with due caution and circumspection."

An indictment was rendered against claimant and he requested that the Judge Advocate General of the Navy arrange for his defense by Government counsel. The Judge Advocate General declined to transmit the request to the Department of Justice for the reason that it would be inconsistent to ask the United States attorney to designate counsel to defend claimant inasmuch as it was the United States attorney's duty to prosecute him. Claimant engaged private counsel to defend him at the trial, which resulted in a verdict of acquittal. Counsel charged claimant a fee of \$450 for his services, all of which claimant has paid.

There appears to be no appropriation available to the Navy Department from which reimbursement could be made to this claimant, particularly in view of the prohibition imposed by section 189 of the Revised Statutes (5 U. S. C. 49), that "No head of a department shall employ attorneys or counsel at the expense of the United States; but when in need of counsel or advice, shall call upon the Department of Justice, the officers of which shall attend to the same."

The committee, in agreement with the Department of the Navy and the Department of Justice, concludes that the unusual circumstances in this case justify a private relief bill to reimburse claimant for the expense actually incurred by him as an aftermath of the performance of his official duties for the Navy, and recommends favorable consideration of this bill.

The report of the Department of Justice dated March 29, 1951, concerning this bill, is appended hereto and made a part of this report.

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D. C., March 29, 1951.

Hon. PAT McCARRAN,
*Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.*

MY DEAR SENATOR: This is in response to your request for the views of the Department of Justice concerning the bill (S. 1109) for the relief of Grady Franklin Welch.

The bill would provide for payment of the sum of \$450 to Grady Franklin Welch, in full settlement of all claims against the United States for attorney's fee paid by him for his defense in a criminal case.

In compliance with your request a report was obtained from the Department of the Navy concerning this legislation. According to that report, which is a copy of the report submitted to the Speaker of the House of Representatives in connection with this bill, it appears that claimant, while engaged in the performance of his official duties as guard supervisor at the Security Department, United States Naval Amphibious Base, Little Creek, Norfolk, Va., shot and killed a prowler who was subsequently identified as a marine member of a troop training unit stationed at the base. A naval board of investigation, after a thorough inquiry, found that claimant had acted in the performance of his duty as a member of the civilian base police force; that he fired at the marine under the performance of an obligation to prevent his escape as a last resort; and that he was engaged in the commission of a lawful act and that he had acted with due caution and circumspection.

An indictment was rendered against claimant and he requested that the Judge Advocate General of the Navy arrange for his defense by Government counsel. The Judge Advocate General declined to transmit the request to the Department of Justice for the reason that it would be inconsistent to ask the United States attorney to designate counsel to defend claimant inasmuch as it was the United States attorney's duty to prosecute him. Claimant engaged private counsel whose fee was \$450 and claimant was acquitted at the trial.

The Department of the Navy states that it considers that the unusual circumstances existing in this particular case justify a private relief bill to compensate claimant for the expenses actually incurred by him as an aftermath of the performance of his official duties for the Navy.

The Department of Justice concurs in the views of the Department of the Navy. The Director of the Bureau of the Budget has advised this office that there would be no objection to the submission of this report.

Yours sincerely,

PEYTON FORD,
Deputy Attorney General.